MICHIGAN

Guide to Military Family Law

Prepared by

Michigan Department of Attorney General *and*
Thomas M. Cooley Law School
Center for Ethics, Service, and Professionalism

THE THOMAS M. COOLEY LAW SCHOOL
In corde hominum est anima legis.
1972

FOREWORD

Family law matters are some of the most difficult legal matters judges and attorneys handle. Not only are they often legally complex, but they are emotionally difficult. These matters are frequently heart-wrenching for all involved in the process. The emotional strain connected with family law matters is exacerbated for families who have already sacrificed so much for military service. We owe it to these families to handle their legal matters with competence and respect. Because of this, it is important that judges and attorneys fully understand the law as it applies to military families.

The Michigan Guide to Military Family Law provides information on numerous family law topics including divorce, child custody, and child and spousal support. It is a good starting point for judges and attorneys faced with handling a family law matter involving a military family. As with any bench book, this guide should not be viewed as a replacement for legal research specific to a case.

This guide is the product of diligent work by Assistant Attorneys General from my office and multiple Cooley Law School students, their professors, and attorneys with experience handling family law issues for military families, all of whom assisted in the editing and development of this guide.

I thank everyone involved in this project. You have done an important service for Michigan judges, attorneys, and military families confronting family law issues.

Bill Schuette
Michigan Attorney General

TABLE OF CONTENTS

CHAPTER 1:
SERVICE, DEFAULTS, AND STAYS

I. PERFECTING SERVICE ON A SERVICE MEMBER

A. General Rule

As with all defendants, a service member defendant must be properly served before the court has jurisdiction to enter a judgment against him or her.[1]

B. Applicability

The rules governing service of process on civilian litigants generally apply to members of the Armed Forces. Service of process on a service member stationed on a military installation, however, is often complicated because of federal control over the military installation. In that case, military regulations affect how service may be accomplished.

C. Jurisdictional Boundaries

The steps required to serve process on a service member will depend on whether the member is stationed on-post or off-post and whether the member is in the United States or overseas. The steps can also vary depending on the military branch.

1. Service Member Housed Off-Post and in the United States

If a defendant in the military lives outside the confines of a military installation and in the United States, then the service member can be served process in the same manner as a civilian.[2] This is generally true for members of the National Guard or Reserves, as well, unless they are on active duty and living on a military installation.

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[1] Mich. Comp. Laws §§ 600.701-.705; Eisner v. Williams, 298 Mich. 215, 220, 298 N.W.2d 507, 509 (1941) (A court "cannot adjudicate [an in personam] controversy without first having obtained jurisdiction [over the] defendant by service of process. . . ."); Lawrence M. Clarke, Inc. v. Richco Constr., Inc., 489 Mich. 265, 274–75, 803 N.W.2d 151, 157 (2011) ("MCR 2.105(J)(1) explains the provisions of the court rules related to service of process are 'intended to satisfy the due process requirement that a defendant be informed of an action by the best means available under the circumstances.'") (quoting Krueger v. Williams, 410 Mich. 144, 156, 300 N.W.2d 910, 914 (1981) ("Service may be made personally on a defendant or, if this is not possible, constructive service is permitted")); Fulton v. Citizens Mut. Ins. Co., 62 Mich. App. 600, 606, 233 N.W.2d 820, 824 (1975).

[2] Mich. Ct. R. 2.104 ("Proof of service may be made by "(1) written acknowledgement of the receipt of a summons and a copy of the complaint, dated and signed by the person to whom the service is directed or by a person authorized under these rules to receive the service of process; (2) a certificate stating the facts of service, including the manner, time, date, and place of service, if service is made within the State of Michigan by (a) a sheriff, (b) a deputy sheriff or bailiff . . .(d) an attorney for a party; or (3) an affidavit stating the facts of service, including the manner, time, date, and place of service, and indicating the process server's official capacity, if any.").

2. Service Member Housed On-Post and in the United States

Military Authority Involvement

If a service member lives on a military installation, it may be difficult for a process server to gain access to the military installation for the purpose of properly serving the individual. As detailed below, however, military authorities can sometimes assist in serving process on service members.[3]

Service by Mail

Because it can be difficult and time consuming to gain access to military installations to personally serve a service member, it is generally easier for plaintiffs to serve active duty members of the Armed Forces by mail. The Michigan Court Rules allow service by mail. "If a service member refuses to accept documents served by mail, military or postal authorities should note the refusal and return the documents to the sender."[4] "The proper addressing and mailing of a letter creates a legal presumption that it was received. This presumption may be rebutted by evidence, but whether it was received is a question for the trier of fact."[5]

Service of Process on Army Installations

Some Army installations are under exclusive federal jurisdiction, while others grant or share the right to serve process with the state in which the installation is located.

For those bases under exclusive federal jurisdiction, the commander or supervisor will determine if the service member wishes to voluntarily accept service. Before making a decision, military authorities must give the member an opportunity to obtain legal advice.[6] If the service member does not wish to accept service voluntarily, the party requesting service will be notified that the nature of the exclusive federal jurisdiction precludes service by state authorities on the army installation.[7]

For those bases under concurrent state and federal jurisdiction, or where the United States has only a proprietary interest, the commander or supervisor will determine if the service member wishes to accept service. If the service member declines, the requesting party will be allowed to serve the process in accordance with applicable state law, subject to reasonable restrictions imposed by the commander.[8]

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[3] *See, e.g.*, 32 C.F.R. § 516.10 (2014) and 32 C.F.R. § 720.20(a) (2014).

[4] W. Mark C. Weidemaier, *Service of Process and the Military,* ADMINISTRATION OF JUSTICE BULLETIN NO. 2004/08, at 8 (2004). "*See* 32 C.F.R. § 720.20(a)(2) (Navy regulation requires notation of refusal where service member or civilian refuses to accept out-of-state process, and Navy policy arguably requires service members to accept in-state process sent by mail.); *see also* United States Postal Service, Domestic Mail Manual F010.4.1 (updated Sept. 2, 2004) (where addressee refuses to accept mail, document should be endorsed "refused" and returned)."

[5] Stacey v. Sankovich, 19 Mich. App. 688, 694, 172 N.W.2d 225, 229 (1969); *see* MICH. CT. R. 2.107(C).

[6] 32 C.F.R. § 516.10(d)(1).

[7] 32 C.F.R. § 516.10(d)(1).

[8] 32 C.F.R. § 516.10(d)(2).

Service of Process on Navy and Marine Installations

Navy and Marine Corps regulations require the commanding officer's consent for service on the installation by a process server from the state court where the installation is located.[9] Where practical, the regulation requires the commanding officer to require that the process be served in his or her presence, or in the presence of a designated officer.[10] The regulation, however, makes clear that a commanding officer is not required to act as a process server.[11]

> The regulation further states:
>
> In those cases where the process is to be served by authority of a jurisdiction other than that where the command is located, the person named is not required to accept process. Accordingly, the process server from the out-of-state jurisdiction need not be brought face-to-face with the person named in the process. Rather, the process server should report to the designated command location while the person named is contacted, apprised of the situation, and advised that he may accept service, but also may refuse. In the event that the person named refuses service, the process server should be so notified.[12]

3. Service Member Outside of the United States

Military policies governing service of process abroad are generally similar to those that apply within the United States in areas of exclusive federal jurisdiction. For example, under 32 C.F.R. § 516.12(c), if a Department of the Army official "receives a request to serve state court process on a person overseas, he will determine if the [service member] wishes to accept service voluntarily. … If the [service member] will not accept service voluntarily, the party requesting service will be notified and advised to follow procedures prescribed by the law of the foreign country concerned."

Non-Voluntary Service on a Service Member Overseas

If the service member does not voluntarily accept service and the requesting party still wants to move forward with perfecting service, the requesting party must comply with the requirements of the host nation through the foreign government where the service member is located.[13] This may take several months, as there may be a requirement to get the documents translated, serve them on the appropriate authority within the foreign government, and then wait for them to be served on the individual. Additionally, the United States likely has a Status of Forces Agreement (SOFA) with the foreign government that may limit the ability of the party seeking to serve the service member to obtain service through the foreign government.

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[9] W. Mark C. Weidemaier, *Service of Process and the Military,* ADMINISTRATION OF JUSTICE BULLETIN NO. 2004/08, at 7 (2004).
[10] 32 C.F.R. § 720.20(a).
[11] 32 C.F.R. § 720.20(a).
[12] 32 C.F.R. § 720.20(a)(2).
[13] 32 C.F.R. § 516.12(c)

Country-by-Country Index of Treaties

Specific information on how to serve civil process in a foreign country is available at the U.S. State Department's website: http://1.usa.gov/1ntielq

For specific information regarding service of process overseas use the following:

- *EUROPE:* Foreign Law Branch, International Law Division, Office of The Judge Advocate, Headquarters U.S. Army, Europe, and Seventh Army, Unit 29351, (Heidelberg, Germany) APO AE 09014.
- *KOREA:* Staff Judge Advocate, US Forces Korea (Seoul, Republic of Korea), APO AP 96205.
- *PANAMA, CENTRAL AND SOUTH AMERICA:* (Army Only) Staff Judge Advocate, HQ, US Army South, Fort Clayton, Panama, APO AA 34004-5000.

SERVICE OF PROCESS AT A GLANCE

<table>
<tr><th></th><th>Service Member Housed On-Post</th><th>Service Member Housed Off-Post</th></tr>
<tr><td colspan="3">Service Member In the United States</td></tr>
<tr><td>In general</td><td>Assistance from military authority may be available. If not, service may be accomplished by U.S. mail if the process server does not have access to the military installation. (See section I.C.2.b. in this chapter.)</td><td rowspan="3">Same manner as a civilian. (I.C.1.)</td></tr>
<tr><td>On Army Installations</td><td>The commander or supervisor will determine whether the service member wishes to voluntarily accept service. If not, service of process is controlled by jurisdiction over the base:
Base under exclusive federal jurisdiction:
• Service by state authorities is precluded on the installation. (I.C.2.c.)
Base under concurrent state and federal jurisdiction, or U.S. has only a proprietary interest:
• Service is allowed in accordance with applicable state law, subject to the commander's reasonable restrictions. (I.C.2.c.)</td></tr>
<tr><td>On Navy or Marine Installations</td><td>Personal service by a state court's process server requires the commanding officer's consent. If granted, the law generally requires service in the commanding officer's (or his or her designee's) presence. (I.C.2.d.)
Where service is under the authority of a jurisdiction outside the base-location's jurisdiction, the service member is not required to accept process. The process server should report to the designated command location. The service member will be contacted to ascertain whether he or she wishes to accept service. (I.C.2.d.)</td></tr>
<tr><td colspan="3">Service Member Outside of the United States</td></tr>
<tr><td>In general</td><td colspan="2">Request made to the appropriate military official. That department will determine whether the service member wishes to voluntarily accept service. If not, service of process is governed by the host nation's requirements. (I.C.3.)</td></tr>
</table>

II. PROTECTION OF SERVICE MEMBERS AGAINST DEFAULT JUDGMENTS

The Servicemembers Civil Relief Act (SCRA) protects service members against default in some situations. Under the SCRA, service members are considered on "active duty" when on active-duty status as defined in 10 U.S.C. §101(d)(1) and under 32 U.S.C. § 502(f) for cases of national emergency. This is commonly referred to as being under, or on, Title 10 or Title 32 orders. This generally means that protections under the SCRA do not apply to members of the National Guard unless deployed.

The default judgment protection under the SCRA "applies to any civil action or proceeding in which the defendant does not make an appearance."[14]

Practitioner Note: Any act before the court by a service-member defendant or the defendant's attorney constitutes an appearance depriving the service member of the default protections. In fact, this can even include a request for stay under the SCRA's stay provision.[15]

A. General Rule

A default judgment against a service member is voidable if the service member's ability to appear in the action was *materially affected* by his or her active duty military service, and if he or she had a meritorious or legal defense to the action or some part of it.[16]

B. Requirement of Affidavit of Military Service

"When a judgment, order, or adverse ruling is sought against a party who has not made an appearance, [the court must determine] whether that party is in the military."[17] The SCRA states that any party or the court may request proof of military service from the Department of Defense

[14] 50 U.S.C. app. § 521(a) (2014).

[15] *See* 50 U.S.C. app. § 522 (The modern version of the law indicates that resort to the stay protections precludes later resort to the default protections.); 50 U.S.C. app. § 522(e) ("A service member who applies for a stay . . . and is unsuccessful may not seek the protections afforded by [50 U.S.C. app. § 521])."). *Cf* Blankenship v. Blankenship, 82 So.2d 335, 336 (Al. 1955) (court denied a rehearing indicating that the motion to quash or continue constituted an appearance) *with* O'Neill v. O'Neill, 515 So.2d 1208, 1210 (Miss. 1987) (the service member's "motion for relief amounts to no more than an application to stay the proceedings and should not be construed as an appearance").

[16] Boone v. Lightner, 319 U.S. 561 238 Iowa 355. (1943). "Materially affected" means whether the service members failure to meet the obligation was caused by the military service, as opposed to other factors. This does not necessarily mean that the service member must have a defense that would have prevailed; it is merely that the service member would have offered a cogent defense to the trier of fact had the matter actually gone to trial. *See* Kirby v. Holman, 25 N.W.2d 664, 675 (1947) ("In a hearing under this section [, 50 U.S.C. app. § 521(g)(1)(B),] the court does not decide the issue. . . . it would only decide if there be an issue between the parties which would entitle the defendant to a trial.").

[17] 50 U.S.C. app. § 521; *see also* MICH. CT. R. 2.603(C) (the filing of nonmilitary affidavits is required in default-judgment proceedings); Sprinkle v. SB & C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006) (debt collectors violated SCRA by not filing affidavit prior to entry of judgment when service member debtor was on active duty in U.S. Army in Saudi Arabia).

(DoD), which must issue a statement of military service.[18] A report certifying Title 10 active duty status is available at: http://1.usa.gov/1qEhk9s.

In every civil case, when the service member defendant does not make an appearance, the plaintiff must file an affidavit specifically stating the following:

(1) Plaintiff's knowledge of defendant's military service; or

(2) Plaintiff's inability to determine if the defendant is in military service.[19]

Practical Note: The law generally does not allow non-military defendants to collaterally attack default judgments merely on the technical ground that an affidavit concerning military service was not filed.[20]

C. Defendant Military Status Not Ascertained

If the defendant's military status cannot be ascertained, the court may require the plaintiff to post a bond as a condition to entry of a default judgment. If the defendant is later found to be a service member, the bond may be used to indemnify the defendant against any damages that he or she may have incurred due to the default judgment (if it is set aside). The court may also issue any other orders the court deems necessary to protect the rights of the service member defendant under the SCRA.[21]

D. Mandatory Appointment of Counsel

When the affidavit shows that the party to be defaulted is in military service, no default judgment can be given until the court has appointed an attorney to represent the service member. If the court fails to appoint an attorney, the default judgment is voidable.[22]

E. Granting a Stay for a Defendant on Active Duty who has not received notice

In cases where the defendant is in military service on active duty and has not received notice of the action or proceeding, the court must stay the proceedings for at least 90 days—after application of counsel or on the court's own motion—if the court determines that:

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[18] Mark E. Sullivan, An Agency Guide to the Servicemembers Civil Relief Act 1 (2007). In addition, Michigan SCAO Approved Forms MC 07 and MC07a, concerning defaults, both contain affidavits addressing the defendant's military status. A link to those and other forms can be found at http://courts.mi.gov/Administration/SCAO/Forms/Pages/Civil---General.aspx (last visited June 26, 2014).

[19] 50 U.S.C. app. § 521(b).

[20] *See, e.g.*, Haller v. Walczak, 347 Mich. 292, 79 N.W.2d 622 (1956) (the SCRA was enacted to protect those in the military, not others, and affirming a default judgment because, *inter alia*, the non-servicemember defendants had not been prejudiced by the plaintiff's failure to file an affidavit concerning military service before the default judgment was entered).

[21] 50 U.S.C. app. § 521(b)(3).

[22] 50 U.S.C. app. § 521(b)(2).

(1) There may be a defense to the action and a defense cannot be presented without the presence of the service member; or

(2) After due diligence, counsel has been unable to contact the service member or otherwise determine if a meritorious defense exists.[23]

***Practical Note**:* Although a service member's absence is considered prima facie prejudicial, the presumption of prejudice is rebuttable.[24] Additionally, because nonmilitary codefendants are not covered under the SCRA, the court has discretion whether to grant nonmilitary codefendants a stay or continuance due to the service member codefendant's military service.[25]

F. Distinction between § 521 and § 522

The stay provisions of 50 U.S.C. app. § 521 do not apply in cases where the active duty service member has received notice of the action or proceeding.[26] Once the service member receives actual notice of the action or proceedings, he or she must seek a stay under 50 U.S.C. 522.[27] The stay of proceedings when the service member has notice of the action or proceeding is addressed below, in section III.

G. Setting Aside a Default Judgment Against a Service Member

If a judgment has been entered against the service member while he or she is on active military duty (or within 60 days after the end of active duty), the court may reopen or vacate the judgment to allow the service member to participate, if the court finds all of the following:

(1) At the time the judgment was entered, the service member was materially affected due to military service in asserting a defense;

(2) "the servicemember has a meritorious or legal defense to the action or some part of it"; and

(3) The service member's application to vacate or reopen the default judgment is filed within 90 days after the end of military service.[28]

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[23] 50 U.S.C. app. § 521(d)–(f). This requirement exists because during times of war or extended deployment, the lawyer appointed to represent the defendant may be unable to locate and establish contact with the defendant for several months.
[24] *See* Barry v. Keeler, 322 Mass 114, 121, 76 N.E.2d 158 (1947).
[25] Michael D. Schag, *Finding Your Way Around the Servicemembers Civil Relief Act*, 95 ILL. B. J. 76, 78 (2007).
[26] 50 U.S.C. app. § 522(e).
[27] 50 U.S.C. app. § 522 (f).
[28] 50 U.S.C. app. § 521(g); *see also* Ostrowski v. Pethick, 404 Pa. Super. Ct. 392, 590 A.2d 1290 (1991) (interpreting similar provision in SSCRA).

Practical Note: Since the 90-day period for moving to set aside the judgment does not begin until a service member is released from active duty, a judge should consider the possibility that the service member may remain on active duty for many years. In such a case, the 90 days within which a service member could petition a court to reopen an old default judgment would not begin until after his or her release from active duty—no matter how long after the entry of the default judgment. Remember, as with all SCRA provisions, this protection only applies to members of the National Guard if they are on active-duty orders; it does not apply to traditional drilling members.

H. Bona Fide Purchaser Protected

"If a court vacates, sets aside, or reverses a default judgment against a service member" under the SCRA, "that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment."[29]

III. STAY OF PROCEEDINGS WHEN THE SERVICE MEMBER HAS NOTICE[30]

A. General Rule

The SCRA provides for stays in court and other proceedings, whether the service member is a defendant or a plaintiff.[31] Additionally, under the Michigan Military Act, "actions in state courts including, but not limited to, all intermediate hearings in the suits, pending against any such person when he or she enters active service or commenced at any time during service, must stand adjourned until after the termination of the service."[32]

Practical Note: The protection of 50 U.S.C. app. § 522 is exclusive to service members and not available to dependents and others.[33] A non-military party in litigation may assert the SCRA's tolling provision when there is at least one service member present in the litigation; however, this benefit is "merely incidental to the protections that [the tolling] provision provides to service members."[34]

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[29] 50 U.S.C. app. § 521(h).

[30] "Congress set out the purpose of the SCRA in 50 [U.S.C. app.] § 502: (1) to provide for, strengthen, and expedite the national defense through protection extended by this Act to service members of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and (2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of service members during their military service." Walters v. Nadell, 481 Mich. 377, 385-86, 751 N.W.2d 431-435-36 (2008).

[31] 50 U.S.C. app. § 522(a).

[32] MICH. COMP. LAWS § 32.517 (2014) (Michigan law provides many similar protections for National Guard members ordered by the governor to active service for more than seven days in support of state emergencies or other similar situations.).

[33] *Cf* Jusino v. New York City Housing Authority, 691 N.Y.S.2d 12, 255 A.D.2d 41, (N.Y. App. Div. 1999) *with* Hempstead Bank v. Gould, 282 NY.S.2d 602 (Dist. Ct. 1967) (holding that co-makers of a note are entitled to a stay based on military service of one of the co-makers).

[34] Walters v. Nadall, 481 Mich. 377, 386, 751 N.W.2d 431, 436 (2008).

B. Applicability

50 U.S.C. app. § 522 applies to all civil actions or proceedings, including child custody proceedings, in which, at the time of filing an application for the stay, the plaintiff or defendant:

(1) is in the military service, was terminated, or released from military service within 90 days or less from the filing of the application; and

(2) "has received notice of the action or proceeding."[35]

Practical Note: The minimum stay of proceeding is mandatory but can be waived. Congress enacted the SCRA as a shield to protect service members from having to respond to litigation while in active service but indicated that the SCRA's protections may be waived.[36] Significantly, the Michigan Supreme Court has held that the SCRA's tolling provisions are not self-executing and are waived unless affirmatively asserted before the trial court (although some jurisdictions have reached the opposite conclusion).[37]

C. Notice of the Stay

The other party must be given notice and an opportunity to be heard on the stay request.[38]

D. Authority of the Court

The court may grant a stay of the proceedings *sua sponte* at any time before the final judgment.[39] The court *must* grant a stay of the proceedings if requested by the service member, but only if the service member satisfies 50 U.S.C. app. § 522(b)(2).

Practical Note: If the request complies with the requirements of § 522, the court *must* grant at least a 90-day stay in the proceedings. In Michigan, too, the 90-day stay is mandatory, but only if the service member satisfies the requirements identified below.[40]

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[35] 50 U.S.C. app. § 522(a).

[36] *See* 50 U.S.C. app. § 517(a) ("A servicemember may waive any of the rights and protections provided by this Act"); Walters v. Nadell, 481 Mich. 377, 385-87, 751 N.W.2d 431, 435-37 (2008) (the Act's mandatory tolling protection may be waived if it is not raised in a timely fashion during litigation).

[37] Walters v. Nadell, 481 Mich. 377, 389-90, 751 N.W.2d 431, 436 (2008); *but see, e.g.*, Ricard v. Birch, 529 F.2d 214, 216–17 (4th Cir. 1975); Kenney v. Churchill Truck Lines, Inc., 6 Ill. App. 3d 983, 992–93; 286 N.E.2d 619 (1972).

[38] *City of* Cedartown v. Pickett, 22 S.E.2d 318 (Ga. 1942); Gunnells v. Seaboard A.R. Co., 204 S.E.2d 324 (Ga. Ct. App. 1974); *see also* Howard v. Howard, 48 S.E.2d 451, 452–53 (Ga. 1948) (motion for stay should not be *ex parte* and neither should motion to vacate).

[39] 50 U.S.C. app. § 522(b)(1).

[40] Boone v. Lightner, 319 US 561 (1943) (whether the service member has met the required conditions for a stay is within the discretion of the trial court). *See. e.g.*, In Re Marriage of Bradley, 282 Kan. 1; 137 P.3d 1030 (2006) (holding in a divorce proceeding that the service member failed to meet the conditions for a mandatory stay by neglecting to state when he would be available to appear and not providing the court with a statement from his commanding officer); City of Pendergrass v. Skelton, 628 S.E.2d 136 (Ga. Ct. App. 2006) (a National Guard member's stay application was insufficient where he failed to provide the necessary specific information in support of the application).

E. Requirements for an Application of Stay in Proceedings Under § 522

The court may grant a stay in proceedings on its own motion when a service member is a party to a civil proceeding. The court may also grant a stay when requested by a military service member if the following requirements are met:

(1) "A letter or other communication" is sent to the court, "setting forth facts stating the manner in which current military-duty requirements materially affect the service member's ability to appear and stating a date when the service member will be available to appear"; and

(2) "A letter or other communication from the service member's commanding officer" is sent to the court, "stating that the service member's current military duty prevents appearance and that military leave is not authorized for the service member at the time of the letter."[41]

A stay granted by the court under these conditions will not be less than 90 days.[42]

Practical Note: The SCRA does not require a specific form of communication with the court. So any form of communication could conceivably satisfy the requirement that the service member and his or her commanding officer communicate the stay request and justification to the court.

Practical Note: Courts must remember, "The United States Supreme Court has said that the statute should be read 'with an eye friendly to those who dropped their affairs to answer their country's call.'"[43]

F. Stay Does Not Waive Defenses

A request for a stay does not constitute an appearance for jurisdictional purposes or a waiver of any substantive or procedural defense.[44]

G. Request for Additional Stay

The service member may request an additional stay based on the continuing "material affect" of his or her military duty on the ability to appear. He or she may make this request at the time of the initial request or later, when it appears that the service member is unavailable to defend or prosecute. For an additional stay to be granted, the service member must again assert the requirements of 50 U.S.C. app. §522(b). Once this finding is made, the member is entitled to a stay until the "material affect" is removed.[45]

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[41] 50 U.S.C. app. § 522(b)(2).
[42] 50 U.S.C. app. § 522(b)(1).
[43] Mark E. Sullivan, An Agency Guide to the Servicemembers Civil Relief Act 1 (2007) (quoting Le Maistre v. Leffers, 333 U.S. 1, 6 (1948)).
[44] 50 U.S.C. app. § 522(c).
[45] 50 U.S.C. app. § 522(d)(1).

Practical Note: To obtain an extended stay, the service member must establish that his or her military service "materially affects" the ability to appear in the action. It is within the court's discretion to determine whether military service actually affects the service member's ability to appear.[46]

H. Appointment of Counsel If Additional Stay Refused

If the court denies a request for additional stay under 50 U.S.C. app. § 522(d)(1), the court must appoint counsel to represent the service member in the action or proceeding.[47]

I. Other Applicable Codes

Stays granted under 50 U.S.C. app. § 524 are stays of enforcement of judgments, attachments, garnishments, or orders *that have already been granted*, as opposed to stays of proceedings provided in 50 U.S.C. app. § 522, which is for orders that have *not* already been granted. If any action is brought against a service member and other codefendants who are not protected by the SCRA, then the court—under 50 U.S.C. app. § 525—may authorize the plaintiff to proceed against the codefendants who are not protected by the SCRA. Also, it may be important to note that under 50 U.S.C. app. § 526, the statute of limitation runs for the duration of the period of active military service.

Practical Note: Protection of Person Secondarily Liable under 50 U.S.C. app. § 513(a): If the court extends the SCRA protections by stay, postponement, or suspension of proceedings to a service member, the same extension may be ordered for a surety, guarantor, endorser, accommodation maker, co-maker, or other person who is or may be primarily or secondarily liable in the same cause of action.

[46] *See, e.g.*, Chlebek v. Mikrut, 336 Mich. 414, 421–23; 58 N.W.2d 125, 128-29 (1953) (a plaintiff who made the army his career could properly prosecute his case through a representative; the only "material affect" the plaintiff's military service created was a limit on his ability to testify at a hearing and ordering the case to be heard on the first opportunity the plaintiff had to return home, and if not in a reasonable time, that the plaintiff's deposition be taken in the alternative).

[47] 50 U.S.C. app. § 522(d)(2).

CHAPTER 2:
DIVORCE AND DIVISION OF ASSETS

I. DIVISION OF PROPERTY UNDER THE UNIFORMED SERVICES FORMER SPOUSES' PROTECTION ACT

A. BACKGROUND

The Uniformed Services Former Spouses' Protection Act (USFSPA)[48] was enacted in 1981 to address service members' former spouses' interests in retirement and pension benefits accrued as a result of military service. The USFSPA authorizes state courts to treat military retirement as marital property that may be equitably divided during divorce proceedings, and provides a mechanism to enforce that division through the DoD. Military pensions are considered marital assets in Michigan.[49]

It is important to note that the USFSPA creates no federal right to apportion retired pay. The USFSPA leaves it to the states and their courts to determine both whether and how much to divide military retired pay.

B. ELIGIBILITY TO RECEIVE RETIRED PAYMENT

A spouse or former spouse of a service member is eligible to receive a portion of the service member's retirement pay if he or she was the legal husband or wife (or former husband or wife) of a service member and was married as of the date of the court order.[50] The court order must be a final decree of divorce, dissolution, annulment, or legal separation, or a court-ordered property settlement incident to the decree. The order can include payments of child support, alimony, and division of property.[51]

In some cases, the former spouse may be eligible to receive payments directly from the military. According to the USFSPA, the former spouse may receive direct payments from the Department of Finance and Accounting (DFAS) if the parties were married for 10 years or more during which the member performed at least 10 years of service creditable in determining the member's eligibility for retirement (the 10/10 rule).[52] If the couple was not married for the minimum of 10 years or if the service member did not give 10 years of military service during the marriage, the spouse or former spouse seeking a share of the service member's disposable retired or retainer pay will not be eligible to receive payments *directly from DFAS*.

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[48] 10 U.S.C. § 1408. For military pensions and benefits covered under the Uniformed Services Former Spouses' Protection Act (USFSPA), the judge should review the mandated guidelines for distribution eligibility as set forth within the Act, as well as the Act's general principles discussed below. For all other issues related to general principles for pension, annuity, or retirement benefit distribution and division, the judge should refer to updated versions of the Michigan Family Law Benchbook published by ICLE. The Family Law Benchbook provides an in-depth review of all issues and law related to distribution of pensions, annuities, and other forms of retirement benefits.

[49] Chisnell v. Chisnell, 82 Mich. App. 699, 706, 267 N.W.2d 155, 159 (1978).

[50] 10 U.S.C. § 1408(a)(6).

[51] 10 U.S.C. § 1408(a)(2).

[52] 10 U.S.C. § 1408(d)(2).

Direct payments to the former spouse cannot exceed 50% of disposable retirement pay. Even if a former spouse is awarded more than fifty percent of the retirement in the divorce decree, the *direct payments* under the USFSPA are limited to fifty percent of disposable retirement pay.[53] In cases, however, where there are payments both under the USFSPA *and* pursuant to a garnishment for child or spousal support, the total amount of direct payments to the former spouse may not exceed 65% of disposable retirement pay.[54]

C. VALUATION

Valuation of a military pension is based on the number of years that the member has served and his or her status at the time of the divorce.[55] The DFAS gives valuation procedures and can provide information to assist with the actual calculation of benefit amounts.[56]

D. PROCEDURAL REQUIREMENTS

For purposes of the order, the term "disposable retired pay" means the total monthly retired pay that a member is entitled to, less any applicable withholding amounts and qualified deductions.[57] The order must be served on the DFAS under its guidelines for service. The court order must be "regular on its face" and must, along with other documents served, identify the service member concerned and include the service member's social security number. The order must also certify that the the service member's rights under the SCRA have been followed.[58] The DFAS website includes *Attorney Instructions for Dividing Retired Pay and Sample Court Orders*.[59] It is important to note the DFAS will not accept a traditional qualified domestic relations order (QDRO)—the DFAS does not recognize a QDRO.[60] Instead, an "Order to Divide Military Retired Pay" or a "Qualifying Military Order" must be submitted to the DFAS for registration and preservation of the former spouse's interests in the member's retirement benefits.[61] These orders are similar to a QDRO in design, but act as a specific request related solely to military retirement benefits.[62]

Under the USFSPA, a former spouse seeking an award will not be entitled to the benefit, nor will the DFAS be required to pay any portion of the service member's benefit if the former spouse did not specifically request a share of the service member's benefit during the divorce proceedings and property settlement.[63] The final divorce decree and property settlement must expressly reserve jurisdiction to treat any amount of the service member's retired pay as property

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[53] 10 U.S.C. § 1408(e).
[54] 10 U.S.C. § 1408(e).
[55] *See* http://www.dfas.mil/retiredmilitary/plan/eligibility.html. *See also* http://www.dfas.mil/garnishment/usfspa/attorneyinstructions.html.
[56] *See* http://www.dfas.mil/garnishment/usfspa. *See also* http://www.dfas.mil/garnishment/usfspa/attorneyinstructions.html.
[57] 10 U.S.C. § 1408(a)(4).
[58] 10 U.S.C. § 1408(b)(1).
[59] http://www.dfas.mil/garnishment/usfspa/attorneyinstructions.html
[60] *See* Robert Treat, *The Procedural and Substantive Aspects of Dividing Military Retired Pay by Court Order*, Mich. Fam. L.J., Nov. 2004, at 13. *See also* http://www.dfas.mil/garnishment/usfspa/legal.html and http://usmilitary.about.com/library/milinfo/blprotectfact.htm.
[61] *See* Robert Treat, *The Procedural and Substantive Aspects of Dividing Military Retired Pay by Court Order*, Mich. Fam. L.J., Nov. 2004, at 13.
[62] *See* Robert Treat, *The Procedural and Substantive Aspects of Dividing Military Retired Pay by Court Order*, Mich. Fam. L.J., Nov. 2004, at 13.
[63] 10 U.S.C. § 1408(c).

of the service member and the service member's spouse or former spouse.[64] If the spouse or former spouse does not request an interest in a portion of the member's retirement benefits, and if it is not addressed in the divorce decree, settlement, or order, the former spouse will not be entitled to the service member's pension.[65]

E. Additional Benefits Former Spouse May be Entitled to Receive

The USFSPA permits some former spouses to continue to receive military benefits such as commissary and PX privileges as well as health care. The USFSPA also permits former spouses to be designated as Survivor Benefit Plan beneficiaries.[66]

II. ADDITIONAL CASE LAW

When a service member waives retirement pay in order to receive veteran's disability benefits, those disability benefits are not treated as divisible marital property within the USFSPA.[67] Although state courts cannot generally award a portion of Veterans Administration (VA) disability benefits as divisible property in a divorce proceeding,[68] there is an exception in Michigan. If an existing divorce decree awards a former spouse a portion of the service member's future pension, and if the service member then unilaterally and voluntarily elects to take disability benefits instead of the pension he or she is eligible for, then the former spouse may have the case reopened, at which time the court may review the matter for intent and fairness.[69]

Failure to reference pay tables in the QDRO-equivalent or related order will not render the order inconsistent with the judgment or affect a former spouse's entitlement to payment of benefits. Further, accounting for a pension's cost-of-living increase will not be deemed an error if it is equitable and fair.[70]

> ***Practical Note***: The cost-of-living adjustment is automatic unless excluded by court order, so an attorney wishing to exclude it should make the request during proceedings.

Where a spouse receives a *marital* award of 50% of a member's military retired pay in a property settlement, he or she is not precluded from receiving an additional award of 15% of the service member's retired pay in the form of nonmodifiable *spousal* support. A 50% property settlement award and 15% spousal support award are within the statutory limit of 65% of the service member's disposable retired pay.[71]

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[64] 10 U.S.C. § 1408(c).
[65] 10 U.S.C. § 1408(a)(2)(c) (discussing the specific way that the settlement must be addressed to be enforceable).
[66] 10 U.S.C. § 1408.
[67] Mansell v. Mansell, 490 U.S. 581, 594 (1989).
[68] Mansell v. Mansell, 490 U.S. 581, 594 (1989).
[69] *See, e.g.* Megee v. Carmine, 290 Mich. App. 551, 802 N.W.2d 669 (2010).
[70] McMichael v. McMichael, 217 Mich. App 723, 728; 552 NW2d 688, 690 (1996).
[71] Turkette v. Turkette, No. 287695, 2010 WL 624335 (Mich. Ct. App., Feb 23, 2010), lv den 488 Mich. 856 (2010)

CHAPTER 3:
CUSTODY

I. CHILD CUSTODY UNDER THE SCRA

A. Child Custody Proceedings Under Michigan Law

As noted above, the SCRA extends protection against default judgment to service members involved in child custody proceedings.[72] Further, the Michigan Child Custody Act (MCCA)[73] addresses child custody proceedings for service members who are parents. The MCCA covers a number of topics, including motions for change of custody while a service member parent is on active duty, temporary custody orders, and treatment of custody proceedings upon return of the active duty parent.

The MCCA prohibits a court from entering a final judgment on child custody while a parent is on active military duty:

> If a motion for change of custody is filed during the time a parent is in active military duty, the court shall not enter an order modifying or amending a previous judgment or order, or issue a new order, that changes the child's placement that existed on the date the parent was called to active military duty . . .[74]

Active military duty includes "when a reserve unit member or national guard unit member is called into active military duty."[75]

The MCCA addresses the immediate needs of the child by providing that "the court may enter a temporary custody order if there is clear and convincing evidence that it is in the best interest of the child."[76] This provision gives the court the ability to balance the legal duty to resolve child custody according to the best interest factors and the duty to protect active duty military parents from disadvantage in custody proceedings.[77]

The MCCA further requires that when the parent returns from active military duty, "[the] court shall reinstate the custody order in effect immediately preceding that period of active military duty."[78] This provision seeks to restore the service member parent's custody status to what it

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[72] 50 U.S.C. app. § 521 and 50 U.S.C. app. § 522. *See generally* Sara Estrin, *The Servicemembers Civil Relief Act: Why and How This Act Applies to Child Custody Proceedings*, 27 Law & Ineq. 211 (2009) and Mark E. Sullivan, *Military Custody Twists & Turns*, 28 Fam. Advoc., Fall 2005, at 23.
[73] Mich. Comp. Laws § 722.21, et seq.
[74] Mich. Comp. Laws § 722.27(1)(c).
[75] Mich. Comp. Laws § 722.22(a).
[76] Mich. Comp. Laws § 722.27(1)(c).
[77] *See generally* Sara Estrin, *The Servicemembers Civil Relief Act: Why and How This Act Applies to Child Custody Proceedings*, 27 Law & Ineq. 211, 226 (2009).
[78] Mich. Comp. Laws § 722.27(1)(c).

was before that parent went on active duty and to prevent that parent from being disadvantaged as a result of serving the United States.[79]

The other parent may re-file the motion for change of custody once the service-member parent returns. The court must then consider the best interest of the child; depending on the length of time a temporary order has been in place, the court may find a new established custodial environment. In that instance, the new environment will not be disrupted without a showing of clear and convincing evidence that a change is in the best interests of the child.[80] But "[the] court shall not consider a parent's absence due to that military duty in a best interest of the child determination."[81]

Practical Note: Notably, the Michigan Court of Appeals has suggested that a service member's active duty is "extraneous to the child's best interests, which are paramount by statute. Mich. Comp. Laws § 722.25 expressly directs that, in a child custody dispute between parents, 'the best interests of the child control.' Creating some type of special blanket rule to preclude a change of custody in relation to a child having been left in the care of the parent who was not awarded primary physical custody because the parent who had been awarded such custody was called up for active military service would plainly be contrary to this statutory directive because it would place extraneous considerations above the best interest of the child."[82] This is an unpublished opinion, and the quoted passage is dicta. It remains to be seen whether other courts will follow this suggestion.

B. Family Care Plan Upon Deployment

Service members are required to create a Military Family Care Plan that addresses the care of minor children during one or both parents' deployment. Service member parents can assign guardianship of their minor children to family or friends by executing a power of attorney in preparation for deployment.[83] Service members, however, are cautioned that these documents may not control custody proceedings. Parents who are separated or divorced are advised to work together to form an agreement regarding the care of shared children in the case of deployment of one or both parents.[84]

C. Additional Case Law

In *Tallon v. Dasilva*, a military father used a power of attorney to assign his custody rights to his parents while he was deployed. The Court held that "custody rights are not assignable to third parties. . . . If a parent is permitted to assign custody rights to a grandparent, there is no principled reason as a matter of law why he or she could not also assign these custody rights to

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[79] *See* Shawn P. Ayotte, Note, *Protecting Servicemembers from Unfair Custody Decisions While Preserving the Child's Best Interests*, 45 New Eng. L. Rev. 655, 678 (2011).
[80] Mich. Comp. Laws § 722.27(1)(c).
[81] Mich. Comp. Laws § 722.27(1)(c).
[82] Johnson v. Johnson, No. 258062, 2005 WL 473996 at *4 (Mich. Ct. App. Mar. 1, 2005). *See generally* Jay M. Zitter, Annotation, *Effect of Parent's Military Service Upon Child Custody*, 21 A.L.R.6th 577 (2007).
[83] *See generally* Sara Estrin, Article, *The Servicemembers Civil Relief Act: Why and How This Act Applies to Child Custody Proceedings*, 27 Law & Ineq. 211, 218-219 (2009) and Mark E. Sullivan, *Military Custody Twists & Turns*, 28 Fam. Advoc., Fall 2005, at 23.
[84] *See generally* Mark E. Sullivan, *Military Custody Twists & Turns*, 28 Fam. Advoc., Fall 2005, at 23.

any other third party. This is a slippery slope devoid of legal foothold. The best interests of children in custody disputes are determined not by unilateral fiat of one parent, but by the courts."[85]

Similarly, in *Lebo v. Lebo*, a military father with primary physical custody used a power of attorney, executed as part of his Military Family Care Plan, to assign his custody rights to his current wife upon deployment, even though the father had joint custody with the child's mother. The mother moved for temporary custody, and the trial court denied her motion, stating that the father was within his rights as primary custodial parent to arrange for care of the minor child while he was deployed.[86]

On appeal, the court reversed and remanded for a hearing to determine temporary custody. The court of appeals stated that a parent with primary physical custody has the authority to make decisions regarding a child's day-to-day care, so the father was within his rights to leave the child in the care of his current wife. However, the father did not have the authority to "unilaterally change custody of [the] minor child as [he] apparently attempted to do in his power of attorney." The power to modify a custody order belongs to the court.[87]

II. CHILD CUSTODY UNDER THE UNIFORM CHILD CUSTODY JURISDICTION ENFORCEMENT ACT

A. BACKGROUND

Military families relocate frequently, and military parents are often separated from their family during deployment for prolonged periods of time. When a military family is involved in a child custody proceeding, the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) should be considered.

The UCCJEA became effective in Michigan on April 1, 2002. The purpose of the UCCJEA is to provide a consistent jurisdictional hierarchy for states to address child custody proceedings involving more than one state or a foreign country, to encourage cooperation and communication between the courts so that the most appropriate court presides over the case, to discourage the use of multiple jurisdictions, to ease enforcement of custody orders, to avoid relitigation in child-custody disputes, and to prevent repeated litigation of custody issues where a final judgment is in place.[88]

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[85] Tallon v. DaSilva, No. FD02-4291-003 (Ct. Com. Pl. Alleghany County 2005), reprinted in 153 Pittsburgh Legal J. 164 (2005) and *see generally* Sara Estrin, Article, *The Servicemembers Civil Relief Act: Why and How This Act Applies to Child Custody Proceedings*, 27 LAW & INEQ. 211, 220 (2009).
[86] Lebo v. Lebo, 886 So. 2d 491, 492-93 (La. Ct. App. 2004).
[87] Lebo v. Lebo, 886 So. 2d 491, 492-93 (La. Ct. App. 2004). and *see generally* Sara Estrin, Article, *The Servicemembers Civil Relief Act: Why and How This Act Applies to Child Custody Proceedings*, 27 LAW & INEQ. 211, 219 (2009).
[88] *See generally* Claudia G. Catalano, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Significant Connection Jurisdiction Provision*, 52 A.L.R. 6th 433 (2010) , and Mark E. Sullivan, *Military Custody Twists & Turns*, 28 FAM. ADVOC., Fall 2005, at 23.

B. Initial Jurisdiction of Child Custody Determination Under UCCJEA

Under MCL § 722.1201, a Michigan court has jurisdiction over initial custody determinations under the following circumstances:

> (1)(a) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.
>
> (b) A court of another state does not have jurisdiction under subdivision (a), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 207 or 208, and the court finds both of the following:
>
> > (*i*) The child and the child's parents, or the child and at least 1 parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.
> >
> > (*ii*) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.
>
> (c) All courts having jurisdiction under subdivision (a) or (b) have declined to exercise jurisdiction on the grounds that a court of this state is the more appropriate forum to determine the custody of the child under section 207 or 208.
>
> (d) No court of another state would have jurisdiction under subdivision (a), (b), or (c).
>
> (2) Subsection (1) is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.
>
> (3) Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child-custody determination.[89]

In Michigan, the UCCJEA is inapplicable in both adoption proceedings and proceedings for authorization of emergency medical care for a child.[90]

[89] Mich. Comp. Laws § 722.1201.
[90] Mich. Comp. Laws § 722.1103.

The UCCJEA gives priority jurisdiction to a child's "home state." A child's home state means:

> the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than 6 months of age, ["home state"] means the state in which the child lived from birth with a parent or person acting as a parent. A period of temporary absence of a parent or person acting as a parent is included as part of the period.[91]

However, continuing jurisdiction may exist with a child's previous home state if a parent or person acting as a parent remains in the state that made the initial custody determination.[92]

A Michigan court will recognize and enforce child custody decisions from another state if decided in conformity with the UCCJEA.[93] A Michigan court may consult decisions from other state courts when interpreting the UCCJEA.[94]

C. Modification of Child Custody Under the UCCJEA

The court with jurisdiction over an initial custody determination retains exclusive, continuing jurisdiction over the child custody determination until either of the following occurs:

> (a) A court of this state determines that neither the child, nor the child and 1 parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships.
>
> (b) A court of this state or a court of another state determines that neither the child, nor a parent of the child, nor a person acting as the child's parent presently resides in this state.[95]

So while the initial issuing court has the sole ability to determine if "significant contacts" with the state no longer exist to justify jurisdiction, the initial issuing court or any other court may determine that the child, a parent of the child, or the person acting as a parent to the child no longer resides in the initial issuing state and may, therefore, take jurisdiction. If the initial issuing court finds that any of these circumstances are present, the court may decline to exercise continuing jurisdiction on the basis of inconvenient forum.[96]

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[91] Mich. Comp. Laws § 722.1102(g).
[92] *See generally* Claudia G. Catalano, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Significant Connection Jurisdiction Provision*, 52 A.L.R. 6th 433 (2010).
[93] Mich. Comp. Laws § 722.1303(1).
[94] Mich. Comp. Laws § 722.1303(2).
[95] Mich. Comp. Laws § 722.1202(1).
[96] Mich. Comp. Laws § 722.1202 and *see generally* Claudia G. Catalano, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Significant Connection Jurisdiction Provision*, 52 A.L.R. 6th 433 (2010).

Any party, the forum court, or another court may raise the issue of inconvenient forum. The Michigan court will consider all relevant factors to determine if jurisdiction is appropriate in a different court before declining jurisdiction for inconvenient forum; these factors include the following:

> (a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.
>
> (b) The length of time the child has resided outside this state.
>
> (c) The distance between the court in this state and the court in the state that would assume jurisdiction.
>
> (d) The parties' relative financial circumstances.
>
> (e) An agreement by the parties as to which state should assume jurisdiction.
>
> (f) The nature and location of the evidence required to resolve the pending litigation, including the child's testimony.
>
> (g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.
>
> (h) The familiarity of the court of each state with the facts and issues of the pending litigation.[97]

Under the UCCJEA, a court is not to consider the best interests of the child factors in making a jurisdiction determination. Rather, the court is only to consider the factors described in the UCCJEA when making a determination.[98]

The Michigan Court of Appeals has interpreted the UCCJEA according to its plain meaning, using the ordinary definitions of "significant" and "connections."[99] The court found that the Michigan statute provides a "clear two-pronged test" and also determined the following:

> [The trial court] that makes an initial custody determination retains exclusive, continuing jurisdiction until neither the child nor the child and one parent or a person acting as a parent "have a significant connection with this state" *and* "substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships." The Legislature's use of the term "and" compels the conclusion that jurisdiction is retained until both the requisite significant connection and the requisite substantial evidence are lacking.[100]

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[97] MICH. COMP. LAWS § 722.1207(2).
[98] *See* Atchison v. Atchison, 256 Mich. App. 531, 536, 664 N.W.2d 249, 252 (2003).
[99] *White v. Harrison-White*, 280 Mich. App. 383, 390; 760 N.W.2d 691, 696 (2008).
[100] *White v. Harrison-White*, 280 Mich. App. 383, 389; 760 N.W.2d 691, 696 (2008) and *see generally* Claudia G. Catallano, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision—No Significant Connection/Substantial Evidence,* 59 A.L.R. 6th 161 (2010).

D. Child Custody Order From Another State Under the UCCJEA

A child custody order from another state may be registered in a Michigan court and is enforceable as of the date of registration.[101] A Michigan court may grant relief available under Michigan law to enforce a custody order from another state. The registration, however, does not allow a Michigan court to modify a custody order from another state, unless jurisdiction is proper under MCL 722.1201.[102]

Upon registration, a Michigan court must give notice of registration and the procedure for contesting registration to any parent or person acting as a parent to the referenced child.[103] Registration can only be contested by requesting a hearing within 21 days notice. The only grounds for contesting registration are (1) the issuing court did not have jurisdiction under the Act; (2) the child custody order to be registered has been vacated, stayed, or modified by a court with jurisdiction; or (3) failure to provide notice of the registration proceeding to the contesting party.[104] A failure to contest within 21 days results in confirmation of the child custody order and bars future objections to the order. [105]

E. Emergency Court Jurisdiction Under the UCCJEA

A Michigan court has temporary emergency jurisdiction to initiate or modify a child custody order if the child is "present in [Michigan] and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse."[106]

If a child custody proceeding has commenced in another state or if another state has jurisdiction, the Michigan court will set a reasonable time limit on the emergency order, and an order from the court of jurisdiction must be obtained.[107] The Michigan court is required to promptly communicate with the court of jurisdiction regarding the emergency order and the necessity for that court to act.[108] A child custody order entered under this emergency provision becomes final if a proceeding has not commenced in the state with jurisdiction (specified in the custody order), and Michigan will then become the child's home state.[109]

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[101] Mich. Comp. Laws § 722.1304(1), (3)(a).
[102] Mich. Comp. Laws § 722.1305 and see § II.B of this chapter, addressing jurisdiction determinations under Mich. Comp. Laws 722.1201.
[103] Mich. Comp. Laws §§ 722.1304(2)(b).
[104] Mich. Comp. Laws §§ 722.1304(4).
[105] Mich. Comp. Laws §§ 722.1304(3)(b), (c) and *see generally* Claudia G. Catallano, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision—No Significant Connection/Substantial Evidence,* 59 A.L.R. 6th 161 (2010) and Mark E. Sullivan, *Military Custody Twists & Turns*, 28 Fam. Advoc., Fall 2005, at 23.
[106] Mich. Comp. Laws § 722.1204(1).
[107] Mich. Comp. Laws § 722.1204(3).
[108] Mich. Comp. Laws § 722.1204(4).
[109] Mich. Comp. Laws § 722.1204(2), and *see generally* Claudia G. Catalano, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Significant Connection Jurisdiction Provision,* 52 A.L.R. 6th 433 (2010) and Claudia G. Catalano, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision—No Significant Connection/Substantial Evidence,* 59 A.L.R. 6th 161 (2010).

III. CHILD CUSTODY UNDER THE HAGUE CONVENTION

A. Background

The Hague Convention on the Civil Aspects of International Child Abduction applies to child custody matters involving foreign countries. Specifically, the Hague Convention establishes the following:

> [L]egal rights and procedures for the prompt return of children who have been wrongfully removed or retained, as well as for securing the exercise of visitation rights. Children who are wrongfully removed or retained within the meaning of the Convention are to be promptly returned unless one of the narrow exceptions set forth in the Convention applies. The Convention provides a sound treaty framework to help resolve the problem of international abduction and retention of children and will deter such wrongful removals and retentions.[110]

B. The Child Custody Act Amendment

In January 2013, Michigan amended the Child Custody Act of 1970 to reflect the safeguards established by the Hague Convention. The amendment reads as follows:

> Except as provided in this subsection, a parenting time order shall contain a prohibition on exercising parenting time in a country that is not a party to the Hague [C]onvention on the civil aspects of international child abduction. This subsection does not apply if both parents provide the court with written consent to allow a parent to exercise parenting time in a country that is not a party to the Hague [C]onvention on the civil aspects of international child abduction.[111]

So Michigan requires all child custody agreements registered with the court to contain language that reflects the prohibition on parenting time in a country that does not participate in the Hague Convention.[112]

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[110] 42 U.S.C. § 11601 and *see generally* Mark E. Sullivan, *Military Custody Twists & Turns*, 28 Fam. Advoc., Fall 2005, at 23 and Fred Morganroth, *The Hague Convention: Understanding and Handling Child Abduction and Retention Cases*, 78 Mich. B.J. 28 (1999).
[111] Mich. Comp. Laws § 722.27a(9).
[112] Mich. Comp. Laws § 722.27a(9).

CHAPTER 4:
INCOME DETERMINATION FOR SUPPORT AND COLLECTION

I. DETERMINING INCOME

A. MICHIGAN CHILD SUPPORT FORMULA

The United States Congress enacted 42 U.S.C. app. § 659 (2000) to give each state power to calculate support guidelines. Where conflicts arise between federal and state law, state law controls under § 659. Therefore, the state ultimately determines and enforces payments. The state has the authority to withhold income, enforce garnishments, and pursue other collection options against military service members. Section 659 does, however, require the calculation of support obligations to be specific and consistent.

In Michigan, the Michigan Child Support Formula determines support guidelines.[113] The Michigan Child Support Formula Manual states that "[t]he first step in figuring each parent's support obligation is to determine both parents' individual income," and section 2.01 instructs on how to determine income.[114] In calculating a service member's income for Michigan support cases, the base pay and all permissible specialty payments and allowances are included. Section 2.01 (C)(4) permits allowances for housing, food, bonuses, VA benefits, G.I. payments (other than educational allotment), and other varieties of specialty pay. This income should be considered together with all other income noted under § 2.01, which broadly encompasses income of all forms and sources.

Practical Note: As shown in section B, calculating income for a military service member can be complicated. The quickest way to assess income for a service member is to review the past several "leave and earnings" statements (LESs). (A service member may have more than one LES.) These serve as a "pay stub" for military members. Below is an explanation of what portions of the pay can be considered in dividing assets. Michigan allows most components of the income to be considered.

[113] MICH. COMP. LAWS ANN. § 552.605 (West 2014). The Michigan Child Support Formula Manual (MCSF) can be found on the State Court Administrative Office website at:
http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Manuals/focb/2013MCSF.pdf
[114] 2013 MCSF 2.01.

B. Income Calculations

1. Basic Pay

Basic Pay is the starting point for calculating military pay. All military members receive Basic Pay based on their rank and years of service. The Office of the Under Secretary of Defense (Comptroller) annually determines the rate of pay for military members. Pay scales are updated frequently. To view current pay charts, see DoD 7000.14-R Financial Management Regulation Volume 7A, Chapter 01 or visit: http://bit.ly/1meK98u. Pay is shown monthly and without added benefits or bonuses.

2. Allowances

Military allowances, with the exception of cost of living adjustments, are not taxed and therefore should be included as in-kind income to account for the increased value given to non-taxable income. While civilians are typically paid a gross income, military members' base pay is augmented by other payments, including allowances. Like basic pay, allowances are subject to change at any time. For quick references of the most current allowance descriptions and tables, visit the Military Pay Tables website referenced under *(1)* immediately above.

The following is a quick summary of the most common allowances:

Basic Allowance for Subsistence (BAS)

Every service member eligible for basic pay is eligible for Basic Allowance for Subsistence pay. Basic Allowance for Subsistence (BAS) covers the cost of meals for military personnel when meals are not provided regularly on a military installation. Michigan includes BAS in the overall income calculation under 2013 MCSF 2.01(C)(4). BAS is paid monthly and is also subject to frequent changes. The most recent calculation can be found in DoD 7000.14-R Financial Management Regulation, Volume 7A, Section 2501, or by visiting the Military Pay Tables website.

General Housing Allowances

A member on active duty entitled to basic pay is authorized a housing allowance based on the member's pay grade, whether or not the member has dependents, and location. Housing Allowance rates are divided into seven categories: BAH (within the United States), BAH-Partial, BAH-Diff, BAH Transit, BAH-RC, OHA (outside United States), and FSH. All categories of housing allowances are considered divisible assets in Michigan.

To see a current chart with BAH rates for specific areas, visit: http://mil-com.me/1ktnh5v.

Family Separation Housing Allowance

Family Separation Housing is an allowance to assist with additional housing costs incurred when a service member is separated from dependents. It is considered a divisible asset in Michigan. Current rates are listed on the Military Pay Tables website.

Clothing Allowances

Clothing allowances should be considered when calculating the military member's overall income. Payment of clothing allowances are determined based on factors such as gender, military branch, and other special circumstances. Clothing allowances fluctuate, and current tables can be found in DoD 7000.14-R Financial Management Regulation Volume 7A, Chapters 29 and 30, or by using the Military Pay Tables website.

Personal Money Allowance

Certain officers are entitled to a Personal Money Allowance in addition to any other pay or allowance authorized. This allowance should be considered income when calculating child support and alimony. Personal Money Allowances fluctuate, and current tables can be found in DoD 7000.14-R Financial Management Regulation Volume 7A, Chapter 31, or by using the Military Pay Tables website.

Family Separation Allowance (FSA)

FSA is available to all members of the military, regardless of rank, to compensate for additional expenses incurred because of an enforced family separation. For specific information regarding eligibility criteria, see DoD 7000.14-R Financial Management Regulation, Volume7A, Chapter 27, Section 270101 – 270103, or visit the Military Pay Tables website.

3. Incentives, Bonuses, and Special Pay

Military members' income includes a variety of incentives, bonuses, and specialty pays. Numerous factors determine members' eligibility, including hazardous work conditions, need and demand for certain positions, highly specialized training, and various other factors. Charts may be found in DoD 7000-R Financial Management Regulations, Volume 7a, or by visiting the Military Pay Tables websites.

C. Calculating Retirement Pay

Michigan law permits a military member's retirement pay to factor into the calculation of income for purposes of determining support obligations. The government calculates retirement pay by multiplying the Retired Base Pay by a "years of service multiplier." However, there are some military disability cases where retired pay is calculated by multiplying the Retired Base Pay by the percentage of disability. Federal law allows the collection of support obligations even on waived retirement pay.[115]

For purposes of calculating support, a retired military member's income may consist of Retired Base Pay, Combat-Related Special Compensation, and any VA disability benefits.

[115] DoD 7000.14-R Financial Management Regulation, Volume 7B, Chapter 27, Section 270601.

1. Retired Base Pay

Retired Base Pay is calculated using the active-duty basic-pay entitlement of the military member. For members who enlisted before September 8, 1980, retired pay is the basic pay of the member on the day before retirement. The calculations are listed on the *Pre-1982 Retirement Percentage Multiple Conversion*, table 3-3, found on page 31 here: http://1.usa.gov/1mSaNIx.

There are some exceptions to this rule, which can be found in DoD 7000.14-R Financial Management Regulations, Volume 7B Sections 0301.

For members who enlisted after September 7, 1980, the retired pay is generally the average of the highest 36 months of basic pay received. The calculations are listed on the *Post-1981 Retirement Percentage Multiplier* Conversions, table 3-4, found on pages 32-35 in the document hyperlinked under *(1)* immediately above.

In some circumstances where military members have temporarily retired or have retired early, an alternative reduction factor is applied. The reduction factors are calculated on the *Reduction Factors Applicable to Temporary Early Retirement Authority*, table 3-5, found on page 36 in the document hyperlinked under *(1)* immediately above.[116]

2. Combat-Related Special Compensation

Combat-Related Special Compensation (CRSC) is not considered retirement pay. CRSC is a monthly entitlement paid in whole-month increments to members who receive a reduced retirement pay because they are receiving U.S. Department of Veterans Affairs disability compensation as a result of combat-related disabilities.[117] CRSC is subject to garnishment for child support or alimony.[118] CRSC is exempt from federal income tax, and therefore, per usual support calculations, the tax advantage should be considered in-kind income.[119]

3. Concurrent Retirement and Disability Payment

Concurrent Retirement and Disability Payment (CRDP) is considered retirement pay. Eligible military retirees are entitled to concurrent receipt of both military retired pay and Department of Veterans Affairs disability compensation.[120] As of January 1, 2014, military retirees receive the full payments of both retiree pay and Department of Veterans Affairs disability compensation.[121]

[116] DoD 7000.14-R Financial Management Regulations, Volume 7B, Chapter 3.
[117] DoD 7000.14-R Financial Management Regulations, Volume 7B, Chapter 63, Section 630101, 630103.
[118] DoD 7000.14-R Financial Management Regulations, Volume 7B, Chapter 63, Section 630104(C).
[119] DoD 7000.14-R Financial Management Regulations, Volume 7B, Chapter 63, Section 630105.
[120] DoD 7000.14-R Financial Management Regulations, Volume 7B, Chapter 64, Section 6401.
[121] DoD 7000.14-R Financial Management Regulations, Volume 7B, Chapter 64, Section 640402.

4. Tax Considerations

Military retirement pay is subject to federal income tax withholding. [122]The gross monthly amount of annuities after they are reduced by a dependency compensation award or social security offset is taxable income and subject to federal income tax withholding.[123] Military member's retirement pay is also subject to state income tax withholding.[124]

D. Priority of Legal Obligation

When a military member owes more than one legal obligation, current support has priority over arrearages, child support has priority over alimony; when there are multiple child support obligations, first in time has priority.[125]

E. Garnishment and Involuntary Allotments

The purpose of this section is to provide information unique to the collection of child support and alimony from the pay of active duty members and members of the Reserve Components.

1. Maximum Amount of Pay Subject to Garnishment or Involuntary Allotment

For the purposes of garnishment and involuntary allotments of an active-duty member's wages, federal law allows up to 50% of the disposable earnings if the member is providing over half of the support for a spouse or dependent who is not the person claiming a support obligation.[126] For military members not providing half of the support to a spouse or dependent, the maximum garnishment amount may not exceed 60% of the member's disposable income.[127]

If the member has arrearages of 12 weeks or more before a pay period, then the maximum percentage that can be taken can be increased by an additional 5%, regardless of the amount of support the military service member is providing to a spouse or dependent.[128]

2. Involuntary Allotment for Arrearages of Support Payments

Under DoD 7000.14-R Financial Management Regulation, Volume 7A, Chapter 41, Section 410201, the processing of statutory allotments for child support and alimony from the pay of active-duty military members is governed by 42 U.S.C. § 665 and 32 C.F.R. Part 54. On proper notification from an authorized person, DFAS will start a statutory child support, or child and spousal support allotment, from the pay and allowances of a member on extended active duty when the member has, under a support order, accrued an arrearage equal to two months or more.

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[122] DoD 7000.14-R Financial Management Regulations, Volume 7B, Chapter 25, Section 2501.
[123] DoD 7000.14-R Financial Management Regulations, Volume 7B, Chapter 25, Section 250102.
[124] DoD 7000.14-R Financial Management Regulations, Volume 7B, Chapter 26.
[125] DoD 7000.14-R Financial Management Regulations, Volume 7B, Chapter 27, Section 270406.
[126] DoD 7000.14-R Financial Management Regulations, Volume7A, Chapter 41, Section 410106(A).
[127] DoD 7000.14-R Financial Management Regulations, Volume7A, Chapter 41, Section 410106(B).
[128] DoD 7000.14-R Financial Management Regulations, Volume7A, Chapter 41, Section 410106(C).

3. Submitting a Claim for Garnishments

Under DoD 7000.14-R Financial Management Regulations, Volume7A, Chapter 41, Section 410108, all garnishment claims against active duty and reserve component members must be mailed to the appropriate processing agent at one of the following addresses:

Director, Garnishment Operations
DFAS Cleveland
PO Box 998002
Cleveland, OH 44199-8002

If the active duty member is stationed in Germany, all legal process issued by German courts must be served according to German law at one of the following addresses:

Army, Navy and Marine Corps
Headquarters, USAREUR and Seventh Army
ATTN: AEAJA-1A
6900 Heidelberg 1
Postfach, 10 43 23

Air Force
HQ USAFE/JAIS
Gegaude 527
Ramstein-Flugplatz
66877 Ramstein-Miesenbach

CHAPTER 5:
DOMESTIC VIOLENCE

I. THE LAUTENBERG AMENDMENT

A. THE ORIGINS OF THE LAUTENBERG AMENDMENT

The Federal Gun Control Act (FGCA) of 1968 restricted the sale and manufacture of firearms and ammunition, and it criminalized certain conduct relating to their possession.[129] The FGCA disqualifies several categories of individuals from possessing firearms or ammunition, including anyone convicted of a crime punishable by imprisonment for more than one year, fugitives, drug addicts, mental incompetents, illegal aliens, those dishonorably discharged from the armed services, and those who have renounced their U.S. citizenship.[130] A disqualified individual is prohibited from transporting or possessing a firearm or ammunition.[131] A licensed dealer may not sell or distribute weapons to anyone who falls into one of the disqualified categories. However, the FGCA allows a person in government service, such as a service member or police at either the federal or state level, to carry a firearm in the performance of official duties, despite being disqualified.[132]

On September 30, 1996, Congress enacted the Lautenberg Amendment; the Amendment added another disqualification category to the FGCA, providing that "[i]t shall be unlawful for any person . . . who has been convicted in any court of a misdemeanor crime of domestic violence, to . . . possess . . . any firearm or ammunition . . . ."[133] The Amendment carves out an exception to the government exception to the FGCA. It prohibits firearm possession by anyone convicted of a misdemeanor crime of domestic violence—including government personnel who would have otherwise been shielded because of the government exception.

B. FRUSTRATION ARISING FROM THE LAUTENBERG AMENDMENT

Determining whether a service member has been convicted of a misdemeanor crime of domestic violence can be challenging. To begin with, the term "conviction" is difficult to define, as each state has its own laws for determining what constitutes a conviction.[134] In Michigan, conversely, the term "conviction" is defined as "a judgment entered by a court upon a plea of guilty, guilty

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[129] *See* 18 U.S.C. § 921–931 (2000).
[130] § 922(d)(1)–(7).
[131] §§ 922(d), 922(g).
[132] *See* § 925(a)(1)–(4).
[133] § 922(g)(9).
[134] *See* § 921(a)(20)(B) . "What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms."

but mentally ill, or *nolo contendere*, or upon a jury verdict or court finding that a defendant is guilty or guilty but mentally ill."[135] With each state creating its own criminal code, a uniform definition of "conviction" is unrealistic.

Inconsistent definitions present just one difficulty. Another is defining whether a service member has been charged with a "misdemeanor crime of domestic violence." "Domestic violence" is defined very broadly, which makes categorizing crimes difficult.[136] Under the FGCA:

> [T]he term "misdemeanor crime of domestic violence" means an offense that (i) is a misdemeanor under Federal or State law; and (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.[137]

Lastly, The Lautenberg Amendment does not apply if "the conviction was expunged or set aside, or if the convicted offender was pardoned for the offense or had his [or her] civil rights restored."[138]

II. PROTECTION ORDERS

A. Protection Orders For Service Members

A protection order, also known as a restraining order, is a court order requiring an individual to stay away from another individual or refrain from certain activities. Protection orders are typically used in cases of domestic violence or stalking. There are different kinds of protection orders, including Military Protection Orders (MPOs) and Civil Protection Orders (CPOs). MPOs are issued by a *military commander* to ensure the safety of service members and family members from the threat of another individual. CPOs are issued by a *civilian judge* to ensure the safety of an individual from the threat of another individual. An MPO is not a substitute for a CPO, which are judicially enforced. But if an individual believes that a service member presents an imminent threat of domestic violence, that individual can seek an MPO, a CPO, or both.

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[135] Mich. Comp. Laws § 780.621a (emphasis added).
[136] 142 Cong. Rec. 11,878 (1996) (statement of Sen. Lautenberg discussing the problem with categorization of the crimes as domestic violence). "[C]onvictions for domestic violence-related crimes often are for crimes, such as assault, that are not explicitly identified as related to domestic violence. Therefore, it will not always be possible for law enforcement authorities to determine from the face of someone's criminal record whether a particular misdemeanor conviction involves domestic violence, as defined in the new law.")
[137] § 921(a)(33)(A).
[138] § 921(a)(33)(B)(ii).

B. Definition of Protection Order

Federal law defines "protection order" as follows:

> (A) [A]ny injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and
>
> (B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking. [139]

C. Protection Order Impact on a Service Member

A protection order for domestic violence can have a negative and lasting impact on a service member's career. In Michigan, a CPO is called a Personal Protection Order (PPO).[140]

When a civilian court grants a PPO against a service member, the PPO may prevent the service member from performing his or her military duties. The PPO may prohibit the service member from owning, possessing, or purchasing firearms, guns, and ammunition. Furthermore, a PPO may cause a service member to lose his or her commission, may impact a service member's ability to re-enlist, or may even cause the service member to be discharged from military service.[141]

[139] 18 U.S.C. § 2266(5) (2000)
[140] Mich. Comp. Laws § 600.2950(1)(a)–(j).
[141] Mich. Comp. Laws § 600.2950(1)(a)–(j).

D. The SCRA Applied to CPO's

Once an individual files a CPO against a service member and a hearing is set, if the service member is on active duty and his or her military service interferes with the ability to appear, that service member may request a 90-day stay of the proceedings under the SCRA.[142] If the service member's military service does not interfere with the ability to appear, he or she must appear in court. At the hearing, the court will not appoint a military attorney to represent the service member; instead, he or she will need to hire a civilian attorney.[143]

As previously discussed, under the SCRA, a service member can request that the court reopen any default judgment against him or her if certain requirements are met.[144] The SCRA does not limit the type of default judgments against the service member as long as the requirements have been satisfied.[145]

E. Court Discretion in CPO Terms

Once a civilian court issues a CPO against a service member, the court decides the terms of the CPO. The court may put terms in the CPO that address children, financial support, or possession, and the court can also require the service member to stay away from an individual or individuals. The CPO may also prohibit the service member from possessing a firearm or ammunition.[146]

F. Enforcement of CPO's on Military Installations

Under federal law, "A civilian order of protection shall have the same force and effect on a military installation as such order has within the jurisdiction of the court that issued such order."[147] Likewise, the DoD has established that CPOs have full force and effect on military installations: "Pursuant to the Armed Forces Domestic Security Act . . . commanders and installation law enforcement personnel shall take all reasonable measures necessary to ensure that a CPO is given full force and effect on all [DoD] installations within the jurisdiction of the court that issued such order."[148]

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[142] 50 U.S.C. app. § 522(a)(1)–(2) (2000).
[143] See *Domestic Violence: Alleged Abuser*, STATESIDELEGAL.ORG, http://statesidelegal.org/domestic-violence-alleged-abuser (last visited May 16, 2014).
[144] *See* supra Chapter 1, section II.G.
[145] *See* 50 U.S.C. app. § 521(g)(1)(A)–(B) (2000).
[146] *See generally* MICH. COMP. LAWS ANN. § 600.2950.
[147] 10 U.S.C. § 1561a (2000).
[148] *See Department of Defense Instruction* 6400.06, section 6.1.3.1.

G. Full Faith and Credit

If the restricted service member moves to another state while the PPO is still in effect, the Full Faith and Credit Clause ensures that the judgment from one state is enforced in another state. 18 U.S.C. § 2265(a) provides for full faith and credit given to PPOs: "Any protection order issued . . . by the court of one State, Indian tribe, or territory . . . shall be accorded full faith and credit by the court of another State, Indian tribe, or territory . . . and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State or tribe."

H. Notification of CPO

Once a court issues a CPO against a service member, the Armed Forces Family Advocacy Committee (FAC) should be notified.[149] Once the CPO is reported to the FAC, the FAC will assign a caseworker to assess the individual's safety, develop a safety plan, and investigate the reasons for requesting the CPO. If the CPO was requested as a result of domestic violence, a victim advocate will ensure that the victim's medical, mental health, and safety needs are being met. In many cases, when responding to a domestic situation, the service member's military commander will order the service member to reside in a dormitory until the FAC investigation is completed.

FAC officials will also interview the service member who is informed of his or her rights, but the service member does not have to speak to the FAC officials if he or she chooses not to.[150]

I. Notification to Civilian Agencies

When a military commander issues an MPO against a service member, civilian authorities must receive notification of the MPO. Federal law requires mandatory *notification* of the issuance of MPOs to civilian law enforcement, but because an MPO is administered by a military commander—not a court—it is not *enforceable* by civilian authorities.[151]

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[149] *See* DoD Directive 6400.1; Rod Powers, *Military Domestic Problems*, About.Com, http://usmilitary.about.com/od/divdomviolence/l/aadomviol1.htm (last visited Jan. 18, 2014).
[150] Article 31 of the Uniform Code of Military Justice.
[151] 10 U.S.C. § 1567a and *see* U.S. v. Banks, 539 F.2d 14 (9th Cir. 1976).

COMMON ABBREVIATIONS

If you practice military family law, you are likely to see these common abbreviations—in this guide and elsewhere.

BAS
Basic Allowance for Subsistence

CPO
Civil Protection Order

CRSC
Combat-Related Special Compensation

CRDP
Concurrent Retirement and Disability Payment

DoD
Department of Defense

DFAS
Department of Finance and Accounting

FSA
Family Separation Allowance

FGCA
Federal Gun Control Act

FITW
Federal income-tax withholding

GI
Government Issue

MCCA
Michigan Child Custody Act

MPO
Military Protection Order

PPO
Personal Protection Order

QDRO
Qualified domestic relations order

SCRA
Servicemembers Civil Relief Act

SITW
State income-tax withholding

SOFA
Status of Forces Agreement

SBP
Survivor Benefit Plan

UCCJEA
Uniform Child Custody Jurisdiction Enforcement Act

USFSPA
Uniformed Services Former Spouses' Protection Act

VA
Veterans Administration

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In corde hominum est anima legis.
1972